

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|---------------------------|---|-------------------|
| DOUGLAS EL | : | CIVIL ACTION |
| | : | |
| Plaintiff | : | |
| v. | : | No. 02CV3591 |
| | : | |
| SOUTHEASTERN PENNSYLVANIA | : | JURY TRIAL DEMAND |
| TRANSPORTATION AUTHORITY | : | |
| | : | |
| Defendant | : | |

**DEFENDANT’S MOTION FOR LEAVE TO FILE ADDITIONAL EVIDENCE IN
SUPPORT OF ITS SUMMARY JUDGMENT MOTION AND TO FILE A REPLY
TO PLAINTIFF’S OPPOSITION TO DEFENDANT’S PENDING MOTION**

Defendant, Southeastern Pennsylvania Transportation Authority (hereafter “SEPTA”) moves this Court for leave to submit additional evidence in support of its summary judgment motion and to file a reply to Plaintiff’s opposition to its pending motion for summary judgment.

In support thereof, SEPTA states as follows:

1. Plaintiff commenced this action by filing a Complaint on June 6, 2002.
2. On or about November 13, 2002, Plaintiff amended his complaint. Therein, Plaintiff alleges, among other things, that SEPTA violated Title VII of the Civil Rights Act of 1964, as amended, when Plaintiff was denied employment as a paratransit driver for King Paratransit Services (“King”), a contractor with whom SEPTA previously contracted for the provision of paratransit services.
3. Plaintiff also purports to represent a class of individuals who have been denied employment because of criminal convictions with various paratransit providers like King.

4. On December 9, 2002, SEPTA filed its Answer and Affirmative Defenses to Plaintiff's Amended Complaint. Therein, SEPTA denied liability to Plaintiff or any member of the class that he purports to represent.

5. On December 23, 2002, SEPTA filed Third Party Complaints against each of the paratransit providers with whom it had contracts for paratransit services during the period 1991 to present. The Third Party Complaints were subsequently dismissed by the Court by Order dated December 10, 2003.

6. On January 14, 2003, this Court entered a Scheduling Order. Therein, the Court directed that all discovery was to be completed by July 14, 2003. Motions for summary judgment were required to be filed no later than August 11, 2003.

7. On August 4, 2003, this Court entered an Order revising the January 14, 2003 Scheduling Order at Plaintiff's request. Significantly, the Court extended the discovery deadline until October 14, 2003, and extended the period for filing pretrial motions to November 11, 2003.

8. In accordance with this Order, SEPTA filed its timely Motion for Summary Judgment on November 12, 2003.

9. Following the filing of SEPTA's Motion for Summary Judgment and the expiration of the discovery deadline, a conference call with counsel for SEPTA and counsel for Plaintiff was held by the Court on November 14, 2003 at the request of Plaintiff. At that time, Plaintiff requested that the discovery deadline be extended – this time to March 15, 2004.

10. On November 25, 2003, an Amended Scheduling Order was entered. There, the Court stated that the discovery deadline would be extended to March 15, 2004 and that Plaintiff

was required to submit his opposition to SEPTA's pending motion for summary judgment on that day as well.

11. On February 26, 2004, the Court, by stipulation of the parties extended the period for taking discovery from third parties until June 14, 2004.

12. On June 2, 2004, the Court entered an Order setting July 14, 2004 as the date that Plaintiff's expert reports are due and the date that Plaintiff must file his response to SEPTA's Motion for Summary Judgment. The Court also directed that SEPTA was to submit its expert reports on or before August 16, 2004.

13. More than seven months have elapsed between the date that SEPTA filed its motion for summary judgment and the date that discovery has closed.

14. During the seven month period referred to in the immediately preceding paragraph, the parties (and third parties) have produced and exchanged thousands of pages of documents. In addition, a total of 13 depositions have been taken since November 11, 2004.

15. Substantial additional evidence has been adduced between November 11, 2003 and June 14, 2004 that supports the arguments advanced by SEPTA in support of its Motion for Summary Judgment including, but not limited to, the following:

a. The criminal conviction hiring policy at issue here does not have a disparate impact on African Americans and Hispanics as alleged by Plaintiff in his Amended Complaint;

b. The reasons that the criminal conviction hiring policy at issue here was included in the paratransit contracts was a concern for the safety of disabled passengers who

utilize such service and not to intentionally discriminate against African Americans and Hispanics as alleged in the Amended Complaint;

c. The criminal conviction hiring policy at issue here is supported by business necessity; and

d. SEPTA was not Plaintiff's employer nor is it the employer of any other individual who may have been denied employment with any paratransit provider.

16. In addition, because of the additional evidence that has been adduced during the discovery period, it is expected that Plaintiff will raise additional issues in its opposition papers that have never been addressed by SEPTA. SEPTA should have the opportunity to address those issues to the extent that they are raised as well.

17. Because SEPTA's expert reports are due on August 16, 2004 and will address the expert reports submitted by Plaintiff and further support the arguments advanced by SEPTA in its Motion for Summary Judgment, SEPTA proposes that it be granted leave to submit additional evidence in support of its Motion for Summary Judgment and to respond to any new matters raised by Plaintiff in his opposition papers on or before August 16, 2004.

18. SEPTA will be prejudiced if its motion for leave is denied.

WHEREFORE, SEPTA respectfully requests that this Motion be granted.

Respectfully submitted,

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Dated: July 7, 2004